

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRAGRANCENET.COM, INC.,

Plaintiff,

- against -

LES PARFUMS, INC., LES PERFUMES, INC.,
ULTRAFRAGRANCES, INC., ULTRA
FRAGRANCES, INC.,
ULTRAFRAGRANCES.COM,

Defendants.

Case No. 09 Civ. 2626 (JFB) (ETB)

PERMANENT INJUNCTION AND
JUDGMENT ON CONSENT

WHEREAS, on June 19, 2009, plaintiff FragranceNet.com, Inc. ("FragranceNet") commenced this action for damages and injunctive relief against defendants Les Parfums, Inc., Les Perfumes, Inc., UltraFragrances, Inc., Ultra Fragrances, Inc., and UltraFragrances.com (collectively, "Les Parfums"), alleging claims of trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114; passing off, false designation of origin, and false description and representation under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); trademark dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); trademark infringement, passing off, and dilution under the statutory and common law of the state of New York, including N.Y. General Business Law § 360-1, the statutory and common law of the state of California, including California Business and Professions Code § 14330, and the statutory and common law of every other state in which Les Parfums does business; violation of Section 133 of the New York General Business Law; unfair competition and unfair and deceptive practices in violation of Section 17200 *et seq.* of the California Business and Professions Code; common law unfair competition and misappropriation; injury to business reputation; and unjust enrichment;

WHEREAS, Les Parfums served its Answer, denying the material allegations of the Complaint;

WHEREAS, FragranceNet is in the business of selling perfumery and related goods via its on-line retail store posted at www.fragrancenet.com, which has become one of the most popular on-line perfume stores in the United States since it began operation in January 1997;

WHEREAS, FragranceNet owns the trademarks PRAGRANCENET, U.S. Registration No. 3,339,343, and FRAGRANCENET.COM, U.S. Registration No. 3,559,768;

WHEREAS, consumers searching for FragranceNet's Web site do so by conducting searches on Internet search engines for the terms "fragrancenet," "fragrancenet.com," or other variations of FragranceNet's trademarks;

WHEREAS, certain Internet search providers offer advertising programs through which an advertiser can purchase "keywords" to ensure that an advertisement for or link to the advertiser's Web site appears when an Internet user enters the keyword(s) into a search on the Internet search provider's site;

WHEREAS, a Web site owner can include a term in the meta tags of its Web site, which are not visible to a user, to increase the likelihood that the Web site will appear when a user searches for that term on an Internet search engine;

WHEREAS, Les Parfums has bid on, purchased, and used keywords, including "fragrancenet," "fragrancenet.com," "fragrance net," "fragrance.net," and other variations of FragranceNet's trademarks, in order to advertise and promote its Web site to Internet users who conduct searches on those terms;

WHEREAS, FragranceNet has alleged that Les Parfums unauthorized use of the PRAGRANCENET and FRAGRANCENET.COM marks and variations of those marks is likely to cause confusion, mistake or deception as to FragranceNet's goods and/or services and as to the

endorsement, affiliation, sponsorship, or association of Les Parfums' goods and/or services with FragranceNet's and will dilute the source-identifying quality of FragranceNet's marks constitutes unfair competition, causes injury to Fragrance Net's business reputation, and results in Les Parfums' unjust enrichment; and

WHEREAS, Les Parfums agrees to the entry of a permanent injunction, on the terms set forth herein;

NOW, THEREFORE, upon the foregoing and the annexed consents of the parties:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

This Court has jurisdiction over this action and the parties hereto;

1. Les Parfums, its officers, agents, servants, employees and attorneys, and those persons acting in concern with it, shall be and hereby are permanently and perpetually enjoined from:

a. using on or in connection with any goods or services or in the manufacture, importation, sale, offering for sale, distribution, advertising, promotion, labeling or packaging of any good or services, or from using for any commercial purpose whatsoever **FRAGRANCENET**, **FRAGRANCENET.COM**, or any confusingly similar term, phrase, or mark, including without limitation "fragrance net" and "fragrance.net";

b. purchasing keywords or the functional equivalent from any Internet search provider for the terms **FRAGRANCENET**, **FRAGRANCENET.COM**, or any confusingly similar term, phrase, or mark, including without limitation "fragrance net" and "fragrance.net";

c. using in the meta tags or anywhere on its Web site(s), whether or not visible to the user, the terms **FRAGRANCENET**, **FRAGRANCENET.COM**, or any confusingly similar term, phrase, or mark, including without limitation "fragrance net" and "fragrance.net";

d. representing by any means whatsoever, directly or indirectly, that there is any form of association, sponsorship, endorsement, authorization, connection, or affiliation between Les Parfums and FragranceNet or between either party and the goods or services offered by the other party;

e. identifying itself as FRAGRANCENET, FRAGRANCENET.COM, or by any other name incorporating the terms FRAGRANCENET, FRAGRANCENET.COM, or any confusingly similar term, phrase, or mark, including without limitation "fragrance net" and "fragrance.net";

f. committing further acts of infringement, dilution, passing off, unfair competition, deceptive practices, or misappropriation with respect to any product or service of FragranceNet or bearing any of FragranceNet's trademarks or variations thereof.

3. Les Parfums, its officers, agents, servants, employees and attorneys, and those persons acting in concern with it, shall immediately cancel and discontinue all uses of FRAGRANCENET, FRAGRANCENET.COM, or any confusingly similar term, phrase, or mark, including without limitation "fragrance net" and "fragrance.net," including but not limited to uses such as Internet keyword advertising and use in meta tags on its Web site;

4. Les Parfums shall file with the Court and serve upon FragranceNet's counsel within thirty (30) days after entry of this permanent injunction, a sworn written statement as provided in 15 U.S.C. § 1116 setting forth in detail the manner and form in which Les Parfums has complied with the injunction.

5. This Court shall retain jurisdiction over this action and FragranceNet's further rights or remedies in connection with this action and to ensure compliance herewith.

CONSENTED AND AGREED TO:

Dated: March 5, 2010

THE LAW OFFICES OF NOAH SHUBE

By:

Noah Shube (NS1300)

N.S

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Attorneys for Defendants

Dated: March 8, 2010

PAUL HASTINGS, JANOFSKY

& WALKER LLP

By:

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Attorneys for Plaintiff

The Clerk of the Court shall close the case.

SO ORDERED:

Dated: New York, New York
March 8, 2010

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U.S.D.J.